IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MILLARD C. BIBEY, III,	:	
Plaintiff,	:	
v.	:	Case No.: 2:16-cv-05388-MSG
SIKORSKY AIRCRAFT CORP., and LOCKHEED MARTIN CORP.,	:	
Defendants.	:	

MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

TABLE OF CONTENTS

Page

Introduction 1

Summary Of Undisputed Material Facts 2

A. Plaintiff's Relationship With Sikorsky Until September 2015 2

B. Plaintiff's Job Duties After Transferring To The Training Department 3

C. Plaintiff's Alleged Internal Report Of Perceived Violations Of FAA Regulations 4

D. Sikorsky Complied with FAA Regulations And Its Training Manual 6

E. Plaintiff's Violation Of Sikorsky's Sexual Harassment And IT Policies 7

F. Newlin's Decision To Fire Plaintiff For Legitimate Policy Violations 10

G. Defendants Did Not Sell Helicopters To Or Maintain Helicopters For Pennsylvania 12

H. Sikorsky Employed Plaintiff—Not Lockheed 12

Argument 13

I. Plaintiff's PWL Claim Fails 14

A. Neither Defendant Was An "Employer" Under The PWL 14

B. Plaintiff Did Not Report Any "Wrongdoing" Under The PWL 15

C. Plaintiff Cannot Prove Causation Under The PWL 18

1. Plaintiff Cannot Make A Prima Facie Showing Of Causation 18

2. Plaintiff Cannot Establish Pretext 19

II. Lockheed Did Not Employ Plaintiff 22

III. Plaintiff Cannot Recover Punitive Damages Under The PWL 24

IV. Plaintiff Has No Right To A Jury Trial Under The PWL 24

Conclusion 25

TABLE OF AUTHORITIES

Page(s)

Cases

Anderson v. Bd. of Sch. Dirs. Of Millcreek Twp. Sch. Dist.,
574 F. App'x 169 (3rd. Cir. 2014)....14, 17, 19

Andy v. UPS,
2003 U.S. Dist. LEXIS 25193 (E.D. Pa. Oct. 24, 2003)....21

Bartos v. Commonwealth,
2012 U.S. Dist. LEXIS 52209 (M.D. Pa. April 13, 2012)....21

Bensinger v. Univ. of Pitt. Med. Ctr.,
98 A.3d 672 (Pa. Super. 2013)....25

Brandau v. ACS, Inc.,
2006 U.S. Dist. LEXIS 59475 (E.D. Pa. Aug. 18, 2006)....15

Celotex Corp. v. Catrett,
477 U.S. 317 (1986)....13, 14

Drumm v. Triangle Tech.,
2016 U.S. Dist. LEXIS 46997 (M.D. Pa. April 7, 2016)....24

Eaves-Voyles v. Almost Family, Inc.,
198 F. Supp. 3d 403 (M.D. Pa. 2016)....14, 15

El v. SEPTA,
479 F.3d 232 (3d Cir. 2017)....14

Golaschevsky v. Dept. of Envtl. Prot.,
720 A.2d 757 (Pa. 1996)....18

Kimes v. Univ. of Scranton,
126 F. Supp. 3d 477 (M.D. Pa. 2015)....16, 17

Kolczynski v. United Space Alliance, LLC,
2005 U.S. Dist. LEXIS 20508 (M.D. Fla. Sept. 20, 2015)....24

Martin v. Safeguard Scientifics, Inc.,
17 F. Supp. 2d 357 (E.D. Pa. 1998)....23

Marzano v. Computer Science Corp.,
91 F.3d 497 (3rd Cir. 1996)....22

McAndrew v. Bucks County Bd. of Comm'rs,
982 F. Supp. 2d 491 (E.D. Pa. 2013) 19

Moore v. City of Phila.,
461 F.3d 331 (3rd Cir. 2006) 21

Nat'l State Bank v. Fed. Res. Bank of N.Y.,
979 F.2d 1579 (3d Cir. 1992)....................13

Nesbit v. Gears Unlimited, Inc.,
347 F.3d 72 (3d Cir. 2003)....................23

Notorfrancesco v. Surgical Monitoring, Assoc.,
2014 U.S. Dist. LEXIS 122402 (E.D. Pa. Sept. 2, 2014) 15

O'Rourke v. Dep't of Corr.,
778 A.2d 1194 (Pa. 2000) 24

Patrick v. Werner Enters.,
2017 U.S. Dist. LEXIS 204144 (M.D. Pa. Dec. 11, 2017) 22

Petro-Ryder v. Pittman,
2015 U.S. Dist. LEXIS 166061 (E.D. Pa. Dec. 11, 2015) 18

Plaso v. IJKG, LLC,
553 F. App'x 199 (3d Cir. 2014) 22, 23

Pruden v. City of Easton,
2012 U.S. Dist. LEXIS 189748 (E.D. Pa. Sept. 4, 2012) 15

Riggio v. Burns,
711 A.2d 497 (Pa. Super. 1998)....................17

Rink v. Ne Educ. Intermediate Unit 19,
2017 U.S. App. LEXIS 25379 (3rd Cir. Dec. 15, 2017)....................19

Romano v. Bucks County Water & Sewer Auth.,
2004 U.S. Dist. LEXIS 4919 (E.D. Pa. March 25, 2004) 24

Sheard v. Lockheed Martin Energy Sys.,
2005 U.S. Dist. LEXIS 35091 (E.D. Tenn. Sept. 28, 2005) 24

Sukenik v. Twp. Of Elizabeth,
131 A.3d 550 (Pa. Commw. 2016) 14, 16

Urey v. Grove City College,
94 F. App'x 79 (3d Cir. 2004)....................19

Zenak v. Police Ath. League of Phila.,
132 A.3d 541 (Pa. Commw. 2014) 25

Statutes

43 P.S. § 1422 ....14, 16, 22

43 P.S. § 1423(a) 14, 15

43 P.S. § 1424(b) 14

43 P.S. § 1424(c) 19

43 P.S. § 1425 24

43 P.S. § 1426 24

Other Authorities

14 CFR § 145 ....5, 16

14 CFR § 145.1 ....16, 17

14 CFR § 145.151(d) 16

14 CFR § 145.157 17

14 CFR § 145.163 ....16, 17

14 CFR § 145.207 16

14 CFR § 145.209 16

14 CFR § 145.219 17

14 CFR § 145.3 17

14 CFR § 145.5 16

14 CFR § 145.51 16

Fed. R. Civ. P. 56 1

Fed. R. Civ. P. 56(c) 13

Defendants Sikorsky Aircraft Corporation ("Sikorsky") and Lockheed Martin Corporation ("Lockheed") (collectively, "Defendants") request summary judgment regarding Plaintiff Millard C. Bibey, III's ("Plaintiff") only remaining claim, because there are no disputed issues of material fact and Defendants are entitled to judgment as a matter of law. Defendants submit this memorandum of law pursuant to Rule 56 of the Federal Rules of Civil Procedure, the Local Rules of this Court, and Judge Goldberg's Policies and Procedures.

Introduction

Following an internal complaint and investigation, Sikorsky concluded that Plaintiff harassed a female coworker. He exposed her to sexual conduct at work, including a nude image of himself on a company computer. He also tried to lure his coworker to a swingers' club with him and his wife to partake in their "non-monogamous" lifestyle. Sikorsky promptly terminated Plaintiff's employment because of his misconduct.

After his termination, Plaintiff concocted a theory that Sikorsky fired him not because he violated legitimate company policies, but instead because he allegedly made internal reports about conduct that he thinks violated federal regulations. Plaintiff therefore asserts a claim under the Pennsylvania Whistleblower Law (the "PWL").[1]

But, Plaintiff's claim fails at every stage. First, Defendants are not entities that Plaintiff can hold liable under the PWL because the PWL applies only to an "employer," which the PWL defines narrowly to include a "public body" or an entity that received money from a "public body." Neither Defendant meets the PWL's narrow definition of employer.

Second, to sustain a claim under the PWL, a plaintiff must have blown the whistle on an instance of "wrongdoing," as defined under the PWL. The "wrongdoing" that Plaintiff claims to have reported was violations of Federal Aviation Administration ("FAA") Regulations. As a matter of law, none of the alleged conduct that Plaintiff claims to have reported, even if true, was a FAA regulatory violation and nothing amounted to "wrongdoing" under the PWL. Plaintiff's subjective belief to the contrary is insufficient.

---

[1] Plaintiff's original complaint included four causes of action. *See* Dkt. 1. Through motions to dismiss, amended complaints, and a Court Order, only Plaintiff's PWL claim remains. *See* Dkt. 10, 15, 18, 23, 26, 27, 34, 35.

And third, Plaintiff's PWL claim falls flat on the issue of causation. No reasonable jury could find that Defendants terminated Plaintiff's employment because of his alleged whistleblower activity. Indeed, the undisputed record shows that Sikorsky fired Plaintiff because he violated Sikorsky's sexual harassment policy and its policy governing proper use of company computers. For any one or more of the above reasons, Plaintiff's PWL claim fails in its entirety.

Finally, the Court should reject Plaintiff's claim against Lockheed because Lockheed was not his "employer," and it should reject Plaintiff's claims for punitive damages and a jury trial, neither of which is available under the PWL. Given the undisputed record evidence, Defendants are entitled to summary judgment on all claims.

Summary Of Undisputed Material Facts

A. Plaintiff's Relationship With Sikorsky Until September 2015

Sikorsky designs, manufactures, and sells military and non-military helicopters and helicopter parts. Statement of Undisputed Material Facts ("SF"), ¶1. Sikorsky's helicopter models include the Black Hawk, in addition to various non-military and commercial models. SF ¶1. Plaintiff worked at Sikorsky's Coatesville, Pennsylvania facility from September 2012 until Sikorsky terminated his employment on May 6, 2016. SF ¶3.

As an aircraft manufacturer, Sikorsky is subject to FAA Regulations that promote safety. SF ¶22. Indeed, FAA Regulations require Sikorsky to develop and maintain a training manual to ensure that individuals who work on Sikorsky helicopters are qualified to do so. SF ¶23. Throughout Plaintiff's employment, Sikorsky maintained a FAA-approved training manual. SF

¶24. That manual outlined Sikorsky's program for evaluating individuals to make sure that they had the skills to build safe, high quality helicopters. SF ¶23-24. Also, as Plaintiff testified, Sikorsky maintained a Code of Ethics that required the company and its employees to comply with applicable federal regulations, and to report any perceived violations. SF ¶11-12.

From September 2012 until September 2015, Plaintiff worked for Sikorsky as an Avionics Technician, helping to build helicopters at the Coatesville facility. SF ¶14-17. He performed that job as a temporary contractor until March 2013, when Sikorsky converted him to a full-time employee. SF ¶14-15. In May 2015, Plaintiff "unofficially" started working in the Training Department. SF ¶17. Plaintiff then applied for an official transfer to that department because he wanted to train people in aircraft avionics. SF ¶17. On September 11, 2015, Sikorsky extended an official offer for Plaintiff to join the Training Department and become a Training Specialist, which he accepted. SF ¶17. At that time, Edward Tomko, Director of Training, became Plaintiff's manager. SF ¶18.

Plaintiff "loved" his job. SF ¶25. Before September 2015, none of Sikorsky's managers or employees said or did anything that gives rise to Plaintiff's claims. SF ¶25.

B. Plaintiff's Job Duties After Transferring To The Training Department

Upon becoming a Training Specialist in the Training Department, Plaintiff became "responsible for developing and administering technical training programs and conducting assessments" regarding helicopter avionics, fabrication, and mechanics. SF ¶19-21. Stated simply, his job was to ensure proper training for individuals who worked or would work on Sikorsky's helicopters, in harmony with Sikorsky's FAA-approved training manual. SF ¶21-22. To that end, among Plaintiff's regular job duties were the following: "Develop and maintain training programs;" "Ensure course materials comply with all government regulations;" "Organize and maintain technical training program materials, training equipment and other departmental supplies;" and "Interact with the Director of Training . . . and others to identify common problems, discuss successful solutions and promote efficient company operations." SF ¶20.

Plaintiff's job duties—particularly those about regulatory compliance and identification of problems—were also consistent with Sikorsky's Code of Ethics. SF ¶20. Indeed, Sikorsky's Code of Ethics encourages employees to report any perceived regulatory violations through a number of available reporting channels. SF ¶11-13. It also prohibited retaliation against any employee who reported perceived regulatory, ethical, or other policy violations. SF ¶11. Plaintiff was aware of Sikorsky's Code of Ethics throughout his employment. SF ¶12. He knew his reporting obligations under it; he knew the reporting channels under it; and he knew the anti-retaliation protection that it provided. SF ¶12-13.

C. Plaintiff's Alleged Internal Report Of Perceived Violations Of FAA Regulations

In September 2015, Tomko assigned Plaintiff to work on "restructuring [] the pre-hiring, aptitude assessment and post-hiring process" at the Coatesville facility. SF ¶26. Tomko gave him this assignment because the pre-hire assessment process outlined in the FAA-approved training manual could use improvement. SF ¶27. According to Plaintiff, the individuals who oversaw the training program before Tomko did so in a manner that was too subjective, opinionated, and lacking in objective controls or standardized grading. SF ¶27. As a result, Sikorsky determined that it had hired an unqualified candidate and soon after fired her "for inability to perform her duties." SF ¶28. Thus, consistent with Plaintiff's job, Tomko instructed Plaintiff to identify any weaknesses in the pre-hire assessment process and to propose solutions. SF ¶29.

Upon doing what Tomko asked him to do, Plaintiff claims that he discovered FAA regulatory violations. Specifically, Plaintiff claims that he uncovered that Sikorsky had hired individuals who received failing or below average pre-hire assessment test scores. SF ¶30. And Plaintiff claims that Tomko, upon learning this, instructed Plaintiff to keep the test scores but to dispose of the physical portion of the exam. SF ¶32. The physical portion of the exam consisted of a steel or aluminum item that the applicant or new hire constructed to demonstrate an aptitude for metal fabrication. SF ¶33. Plaintiff alleges in his Complaint that he "gathered and destroyed the physical exams," but he testified that the physical exams "were never destroyed." SF ¶34. Plaintiff believes that hiring individuals with failing (or below average) test scores and Tomko's alleged instruction to destroy the physical exam violated "CFR part 145." SF ¶35-36.

Plaintiff testified that he believes Sikorsky violated FAA Regulations in two other ways. SF ¶37. He testified that Sikorsky used, for training purposes, helicopter parts that were allegedly identified as destroyed, and retained helicopter parts that Sikorsky somehow was not allowed to retain. SF ¶37. Plaintiff does not recall which FAA Regulation this alleged conduct violated. SF ¶38. Oddly, he did not mention these alleged violations in his Complaint. SF ¶37.

Tomko is the only manager in Plaintiff's reporting chain to whom Plaintiff reported what he thought were FAA regulatory violations. SF ¶40. In his Complaint, Plaintiff alleges that he first reported these so-called violations to Tomko in winter 2016, but he testified that his first report to Tomko was in September 2015. SF ¶31. In any event, Plaintiff admitted that Tomko never said or did anything to indicate that he was upset about Plaintiff's alleged reports of FAA regulatory violations. SF ¶40-41. Plaintiff testified that the perceived violations he allegedly identified were past violations—not present or ongoing violations. SF ¶39. He claims that he either fixed or proposed solutions for each alleged problem. SF ¶39.

Notably, Plaintiff never reported any alleged regulatory violation to Frances Newlin, the Coatesville facility Human Resources Manager, or to any government agency. SF ¶42. Likewise, Plaintiff does not claim that he ever reported, to anyone, Tomko's alleged instruction to destroy the physical component of the pre-hire assessment test. SF ¶43.

D. Sikorsky Complied with FAA Regulations And Its Training Manual

Contrary to a central claim in his Complaint, Plaintiff testified that FAA Regulations do not require a minimum pre-hire assessment test score. SF ¶44. Instead, he testified that "[t]he only thing that the FAA or federal regulation states is that I have to ensure that [individuals hired] are qualified to perform their duties." SF ¶44. When asked to explain how Sikorsky could do that, Plaintiff testified that "you have to have some kind of implemented process," whether it be "a prehire assessment, test, interview," or "training program," "but you need to have some kind of a developed and approved program by the FAA in training." SF ¶45. At the same time, Plaintiff admitted that Sikorsky maintained a FAA-approved training program. SF ¶46.

The FAA-approved training manual that Sikorsky had in place throughout Plaintiff's employment outlined Sikorsky's training and employee assessment program. SF ¶47. That manual, like the FAA's Regulations, did not identify a minimum test score for applicants or new hires. SF ¶48. The manual did not even require a *pre-hire* test or skills assessment. SF ¶49. Under the FAA-approved training manual, a skills assessment or test could occur *after* an employee was hired. SF ¶49 (requiring minimum skills assessment "upon hire" and "within the first 30 days"). FAA Regulations say nothing to the contrary.

Plaintiff's claim that Tomko violated FAA Regulations by instructing him to dispose of the physical component of the pre-hire assessment test—a task that Plaintiff denies ever fulfilling or reporting—is misguided. SF ¶50. Sikorsky's FAA-approved training manual addressed only the retention of documents—not the retention of physical, fabrication components of any test. SF ¶50 ("evaluation forms . . . will be filed . . . and removed after two years. . ." and "[t]he company maintains individual training records for a two year period after employment"). FAA Regulations say nothing to the contrary.

Finally, Plaintiff's claims about the unauthorized use or retention of helicopter parts is similarly misguided. SF ¶51. Neither Sikorsky's FAA-approved training manual nor the applicable FAA Regulation bar the alleged conduct that Plaintiff purportedly identified. SF ¶51.

Notably, during at least the last ten (10) years, "the FAA has not fined or otherwise disciplined [Sikorsky] for violation of any FAA Regulations at the Coatesville facility." SF ¶52.

E. Plaintiff's Violation Of Sikorsky's Sexual Harassment And IT Policies

Sikorsky maintained a policy throughout Plaintiff's employment that prohibited harassment on the basis of sex. SF ¶46. The policy required individuals to report perceived harassment. SF ¶5. It included comprehensive reporting, investigation, and anti-retaliation provisions. SF ¶5. It also reflected that Sikorsky would promptly investigate reports of sexual harassment and take appropriate remedial action against employees who violated the policies, up to and including termination. SF ¶5. Plaintiff was aware of Sikorsky's anti-harassment policy throughout his employment, along with his obligation to comply with the policy. SF ¶6.

Sikorsky also had an Information Services Asset Usage (or "IT") policy during Plaintiff's employment. SF ¶7-9. The IT policy prohibited employees from using Sikorsky's electronic devices and systems to view, store, or transmit pornography. SF ¶7-8 ("Internet usage should not include . . . pornography, or any other content that would be prohibited in the company harassment policies."). Such usage was grounds for termination. SF ¶8. Plaintiff was aware of the IT Policy during his employment, including the consequences for violating it. SF ¶9.

On April 29, 2016—a week before Plaintiff's termination—Jennifer Thomas made an internal complaint that Plaintiff subjected her to sexually inappropriate conduct. SF ¶53-54. Thomas was a contractor who worked as an Administrative Assistant in the Training Department. SF ¶53. As Sikorsky expected her to do under its sexual harassment policy, Thomas reported Plaintiff to Ethics and Compliance Officer, Andrew Whittemore. SF ¶54.

Consistent with its policy, Sikorsky promptly initiated an investigation, assigning Kate Sullivan, Compliance Investigator, to be the lead investigator, with assistance from Whittemore. SF ¶55. On May 3, 2016, the investigators interviewed Thomas and Plaintiff separately. SF ¶56. Thomas reported that Plaintiff "began sexually harassing her about three months" earlier. SF ¶57. Specifically, Thomas reported that Plaintiff subjected her to:

- "unwanted touching";
- "sexually explicit text messages";
- multiple invitations "to join [him] and his wife at a swingers/couples club";
- an alleged joke about the "hole in [his] penis";
- "motions simulating spanking [her] with a ruler" on her buttocks; and
- "a nude photograph of [him]" on "a company owned computer."SF ¶57.

Because Thomas's accusations included a claim that Plaintiff used his work computer to show her a nude image, Sullivan ordered a forensic examination of Plaintiff's work computers. SF ¶58. The forensic examination revealed that numerous pornographic images and videos were on Plaintiff's company computers.[2]SF ¶59. Sullivan wrote in her investigation report:

> A review of [Plaintiff's] company owned laptop computer revealed approximately twenty images of nudity and/or sexual acts. A review of another company owned computer used by [Plaintiff] revealed several similar images and three pornographic videos associated with [Plaintiff's] user profile.

SF ¶59 (noting the pornography was found on Plaintiff's company-owned computer under Plaintiff's unique user identification number). Kolin Mason, the IT professional who conducted

[2]During his deposition, Plaintiff admitted that one of the videos that the forensic examination revealed was of Plaintiff masturbating. SF ¶65.

the forensic exam, wrote in his report that the pornographic "images were viewed on the [Plaintiff's] Internet browser and automatically stored in the temporary Internet files cache." SF ¶60. He also noted that, "based on the computer's Internet history, these images were, at one time, hosted on Facebook.com," which is where Plaintiff may have viewed them. SF ¶60.

During his interview, Plaintiff denied having or downloading any pornographic images on his work computers. SF ¶62. He also denied ever sharing his computer logon information or Facebook password with anyone. SF ¶61.

On the other hand, Plaintiff admitted that he visited Facebook at work—the exact location identified in the forensic report. SF ¶63. Plaintiff also admitted that his Facebook "friends" may have posted pornography that appeared on his Facebook page. SF ¶63-64. Indeed, Plaintiff opined that The Private Affair (or "TPA")—the swingers club to which Plaintiff and his wife belonged—or its members, may have posted pornography that appeared on Plaintiff's Facebook page. SF ¶63-64. In other words, Plaintiff admitted that, while at work and using Sikorsky's computers, he visited an internet location that he knew contained pornography.[3]SF ¶63-64. Sullivan therefore concluded that Plaintiff's denial of having or viewing pornographic material on his work computer lacked credibility. SF ¶67.

As for Plaintiff's claim that he never made sexual advances toward coworkers or invited them to his swingers' club, Sullivan also found this claim to lack sincerity. SF ¶68-71. That was, in part, because Thomas recited the exact name and location of the swingers club to which Plaintiff invited her. SF ¶69. In fact, Plaintiff ultimately admitted that he may have invited

[3]During the course of this litigation, Sikorsky undertook a more robust forensic examination regarding the contents of Plaintiff's company-owned electronic devices. That forensic examination uncovered over 100 inappropriate images and videos. SF ¶65. When presented with that material during his deposition, Plaintiff admitted that it included a naked picture of his wife in the shower. SF ¶65.

Thomas to his swingers club. SF ¶70 ("Q. So is it possible that you invited her? A. Possibly . . .").

Although Plaintiff denied most of Thomas's accusations, he did not deny all of them. SF ¶68. He admitted that he "might have commented 'there's a hole in [his] penis,' but not in a sexual way." SF ¶68 ("Q. It wasn't sexual, it was just a comment about . . . having a hole in your penis. A. Right, like a hole in my nose. . . Q. Okay. And in your view, was that consistent with company policy? A. It was normal").

Less than one hour after his interview with the investigators, Plaintiff sent a text message apologizing to Thomas. SF ¶71 ("I'm sorry if I ever affended [sic] you. I'll probably get in trouble messaging you if I did and ya [sic] reported me. If not please don't tell anyone I did message you."). To Sullivan, this further undermined Plaintiff's credibility. SF ¶59, 63-69.

Of note, during Plaintiff's interview with Sullivan and Whittemore, there was no discussion about any perceived violations of FAA Regulations. SF ¶72. Plaintiff testified:

> So on the May 2nd interview that you participated in, did that interview include any discussion regarding your perceived violations of federal law or regulation? A. **Not at all**. It was all about work and me touching people and the word hole and Jennifer Thomas and meetings and penis and those photos.

SF ¶72 (emphasis added).

F. Newlin's Decision To Fire Plaintiff For Legitimate Policy Violations

Upon completing the investigation, Sullivan found there was evidence that "[s]ubstantiated" Thomas's allegations. SF ¶73. Sullivan recorded her findings in an investigative report, the substance of which she shared with Newlin. SF ¶73. Based on the results of Sullivan's investigation, Newlin made the decision to terminate Plaintiff's employment. SF ¶74. Under Sikorsky's normal termination process, Newlin had to request approval from an advisory council primarily consisting of Sikorsky human resource personnel at

Sikorsky's Connecticut headquarters. SF ¶75. Newlin requested approval to terminate Plaintiff's employment due to her conclusion that Plaintiff violated Sikorsky's sexual harassment and IT policies. SF ¶76 ("Q. Okay. On what basis did you make that recommendation [to terminate Plaintiff's employment]? A. For sexual harassment and violation of the information services asset usage, or IT policy is what we usually call it."). Newlin terminated Plaintiff's employment on May 6, 2016. SF ¶77.

To be clear, Tomko did not make, recommend, or participate in the decision to fire Plaintiff's. SF ¶78 ("Q. At any point, either prior to suspending my client or terminating my client, did you get any input from Mr. Tomko? A. No."). When making the termination decision, Newlin relied only on information from Sullivan's investigation. SF ¶79 ("Q. At any point did you get any input from anybody besides the two investigators . . . regarding suspension or termination? A. No."). When Newlin decided to fire Plaintiff, she had no knowledge of his alleged internal reports about perceived FAA regulatory violations. SF ¶80.

Conversely, Plaintiff testified that he does not know who made the decision to fire him, but Tomko is the only person he can think of who may have wanted to retaliate against him for his internal reports. SF ¶81. After his termination, Plaintiff began to speculate that maybe Sikorsky fired him because he reported what he thought were FAA regulatory violations. SF ¶82-83. ("Q. . . . you felt that it was a fair assumption that the company would want to terminate you to prevent you from shedding more light on these perceived violations of federal law and regulation. A. I think so . . ."). Plaintiff's termination was consistent with Sikorsky's prior terminations of other employees who, like Plaintiff, violated Sikorsky's IT policy by having inappropriate sexual content on their company issued electronic devices. SF ¶85-86.

G. Defendants Did Not Sell Helicopters To Or Maintain Helicopters For Pennsylvania

In his Complaint, Plaintiff alleges that, "[u]pon information and belief, Defendants receive Pennsylvania state funds for the purchase and/or maintenance of helicopters that are used by Pennsylvania State Police and other Pennsylvania rescue agencies and/or departments." SF ¶87. During his deposition, though, Plaintiff admitted that he has no idea whether Defendants sold helicopters or helicopter parts to the Commonwealth of Pennsylvania, the Pennsylvania State Police, or any other agency or department of the Commonwealth. SF ¶88. Likewise, Plaintiff has no knowledge of any Pennsylvania government agency or department that has received any helicopter maintenance services from either Defendant. SF ¶88.

In contrast, it is undisputed that Defendants have not received any funds or revenues from the Commonwealth of Pennsylvania for the sale or maintenance of helicopters during at least the last 5 years. SF ¶89. During the same period, neither Defendant sold a helicopter to, or maintained a helicopter for, the Commonwealth or any of its agencies or departments. SF ¶90. Plus, neither Defendant has received any grant money from the Commonwealth during at least the last five years. SF ¶91.

H. Sikorsky Employed Plaintiff—Not Lockheed

Lockheed is a global, publicly traded corporation that owns a variety of businesses engaged in the aerospace, defense, security, and technology services industries. SF ¶2. Lockheed organizes its subsidiary businesses into one of four "segments" based on the nature of the products and services that each provides: (1) Missiles and Fire Control; (2) Space Systems; (3) Aeronautics; and (4) Rotary and Mission Systems ("RMS"). SF ¶93. On November 6, 2015, Lockheed acquired Sikorsky and placed Sikorsky into its RMS business segment. SF ¶92. Lockheed is Sikorsky's sole parent corporation. SF ¶92.

During the six months between the Lockheed's acquisition of Sikorsky and Plaintiff's termination, Sikorsky and Lockheed were incorporated separately and observed corporate formalities. SF ¶96. Their activities, labor relations, and management were substantially distinct. SF ¶96. For example, Sikorsky and Lockheed: (1) maintained separate corporate offices, in different states; (2) established distinct management structures, with the exception of Sikorsky's president, who reported to one of Lockheed's executive vice presidents; (3) held separate meetings among their executive leadership teams; (4) provided distinct services such that Sikorsky manufactured helicopters and Lockheed owned a portfolio of businesses in the aerospace, defense, security, and technology services industries; (5) preserved separate human resources records and functions, and made independent decisions regarding the hiring and firing of employees; (6) used their own workforces, without allocating the cost of employees between the two companies; (7) and controlled their own day-to-day operations. SF ¶96. Plaintiff never worked in any capacity for any of Lockheed's business segments other than Sikorsky. SF ¶96-97. Sikorsky alone controlled Plaintiff's employment. SF ¶96-97. Sikorsky alone hired him, paid his wage, controlled his day-to-day job duties, and fired him. SF ¶96-97.

Argument

Summary judgment is proper where the pleadings and discovery record "show that there is no genuine [dispute] as to any material fact and that the moving party is entitled to a summary judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). The moving party has "no obligation to produce evidence negating its opponent's case." *Nat'l State Bank v. Fed. Res. Bank of N.Y.*, 979 F.2d 1579, 1582 (3d Cir. 1992).Rather, the movant needs only to point to the lack of evidence supporting the non-moving party's claim. *Id.* The non-moving party must produce admissible evidence supporting the existence of all the essential elements on which he bears the burden of proof. *Celotex*, 477 U.S. at 323. "The non-moving party cannot rest on mere pleadings or allegations; rather it must point to actual evidence in the record on which a jury could decide an issue of fact its way." *El v. SEPTA*, 479 F.3d 232, 238 (3d Cir. 2017).If there is no evidence upon which a reasonable jury could properly find for the non-moving party, as here, summary judgment is proper. *See Celotex*, 477 U.S. at 322-323.

I. Plaintiff's PWL Claim Fails

The PWL provides that an "employer is prohibited from retaliating against an employee 'regarding the employee's compensation, terms, conditions, location or privileges of employment' because of a 'good faith report' of 'wrongdoing.'" *Anderson v. Bd. of Sch. Dirs. Of Millcreek Twp. Sch. Dist.*, 574 F. App'x 169, 173 (3rd. Cir. 2014) (quoting 43 P.S. § 1423(a)); *see also Sukenik v. Twp. Of Elizabeth*, 131 A.3d 550, 555 (Pa. Commw. 2016). The "plaintiff must prove by a preponderance of the evidence that he made a good faith report of wrongdoing" prior to the alleged retaliation. *Sukenik*, 131 A.3d at 555; 43 P.S. § 1424(b). Plaintiff cannot meet his burden.

A. Neither Defendant Was An "Employer" Under The PWL

Under the PWL, an "employer" is a "public body" or an entity "which receives money from a public body." 43 P.S. § 1422. A "public body," in turn, includes any state "officers, political authorities, and any other body which is created or which 'is funded in any amount by or through Commonwealth or political subdivision authority.'" *Eaves-Voyles v. Almost Family, Inc.*, 198 F. Supp. 3d 403, 407 (M.D. Pa. 2016) (quoting 43 P.S. § 1422). Courts have grappled with the scope of the phrase "funded in any amount by or through Commonwealth or political subdivision authority." *Id.* The Supreme Court of Pennsylvania has not ruled on the issue. *Id.*

The lack of binding authority on this subject does not impede summary judgment here. That is because Plaintiff has offered no evidence that Defendants were public bodies or funded by or through public bodies. Plaintiff's effort to sweep Defendants within the PWL's reach hinges on a single speculative claim, namely, that "upon information and belief," "Defendants receive Pennsylvania state funds for the purchase and/or maintenance of helicopters that are used by Pennsylvania State Police and other Pennsylvania rescue agencies and/or departments." SF ¶87. The undisputed record evidence, however, contradicts Plaintiff's claim. SF ¶88-90. As Plaintiff testified, he has no information or belief, much less evidence, that Defendants received Pennsylvania state funds. SF ¶88.

In contrast, Defendants have offered uncontested evidence that, during at least the last five years, they have not sold a helicopter to or maintained a helicopter for the Commonwealth or any agency or department of the Commonwealth.[4] SF ¶89-90. Defendants have also offered evidence that, during the same period, they have not received any revenues from the Commonwealth for the sale or maintenance of helicopters.[5] SF ¶91.

B. Plaintiff Did Not Report Any "Wrongdoing" Under The PWL

Under the PWL, only employees who make "good faith" reports of "wrongdoing" or "waste" are protected from retaliation. 43 P.S. § 1423(a). The PWL defines "wrongdoing" as "[a] violation which is not of a merely technical or minimum nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or code of conduct or ethics

[4]When his speculative claim about Defendants' alleged purchase and/or maintenance of helicopters did not work, Plaintiff tried to argue that they received a grant from Pennsylvania in 2014 to build a tunnel connecting its facility with the Chesco airport. SF ¶91. That strategy did not work either. Plaintiff failed to identify any evidence that Defendants received grant money from Pennsylvania, while Defendants have offered undisputed evidence establishing that Defendants in fact did not receive grant money from Pennsylvania. *Id.*

[5]Even if Defendants had received funds from the Commonwealth for the sale or maintenance of helicopters, his claim still would fail. Under the weight of recent and persuasive authority, the mere receipt of money from a state for services rendered does not bring an otherwise private employer within the PWL's reach. *See Notorfrancesco v. Surgical Monitoring, Assoc.*, 2014 U.S. Dist. LEXIS 122402, at *22-24 (E.D. Pa. Sept. 2, 2014) (receipt of Medicare reimbursements insufficient to make private employer a public body); *Eaves-Voyles*, 198 F. Supp. 3d at 409 (same); *Brandau v. ACS, Inc.*, 2006 U.S. Dist. LEXIS 59475, at *12 (E.D. Pa. Aug. 18, 2006) ("[a] private entity performing services pursuant to a government contract, however, does not qualify as being "'funded through the Commonwealth'"); *but see Pruden v. City of Easton*, 2012 U.S. Dist. LEXIS 189748, at *19-20 (E.D. Pa. Sept. 4, 2012) (receipt of government contract money sufficient to render entity a public body).

designed to protect the interests of the public good or the employer."[6] *Id.* § 1422. "The test is objective; it is irrelevant whether an employee believes the employer's conduct constitutes wrongdoing, [because] an actual violation is required." *Sukenik*, 131 A.3d at 556; *Kimes v. Univ. of Scranton*, 126 F. Supp. 3d 477, 505 (M.D. Pa. 2015). "The law that the employer violated must specifically define some prohibited conduct or it cannot be violated in a way that constitutes 'wrongdoing.'" *Sukenik*, 131 A.3d at 556 (citations omitted). Plaintiff identified no "wrongdoing" under the PWL.

Plaintiff claims that Defendants violated a broad section of the FAA's Regulations, "CFR part 14, Section § 145," but he has never identified a specific subsection. Am. Compl. ¶11-17; SF ¶35. Section 145, and its numerous subsections, reflect FAA Regulations bearing on avionics "repair stations," such as Sikorsky's Coatesville facility. *See* 14 CFR § 145.1 *et seq*. They require each repair station to be FAA certified and to maintain a FAA-approved training manual and program. *Id.* §§ 145.5, 145.51, 145.207, 145.209, 145.163. Plaintiff argues that Defendants violated Section 145 by: (1) hiring individuals with failing or below average pre-hire assessment test scores; (2) instructing him to dispose of the physical, fabrication component of the test; (3) using, for training purposes, helicopter parts that were identified as destroyed; and (4) retaining helicopter parts that Sikorsky somehow was not authorized to retain. SF ¶35-37. None of this alleged conduct, even if true, amounts to a violation of the FAA Regulations that Plaintiff purports to invoke. *See* 14 CFR § 145.1 *et seq*. As Plaintiff admitted, neither these FAA Regulations nor Sikorsky's FAA-approved training manual required a pre-hire assessment or minimum pre-hire test score, much less a minimum numerical test score. SF ¶44-51; 14 CFR § 145.151(d) (without reference to any minimum test score, stating generally that "[e]ach certified repair station must - . . . "[d]etermine the abilities of its noncertificated employees performing maintenance functions based on training, knowledge, experience, or practical tests.").

---

[6] "Waste" under the PWL is defined as: "An employer's conduct or omission which results in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources." 43 P.S. § 1422. Plaintiff's claims do implicate the concept of "waste" under the PWL.

As for the destruction of the physical component of tests—an alleged order the Plaintiff never fulfilled or reported to anyone—that too was not a violation of these FAA Regulations nor Sikorsky's training manual. SF ¶34, 36, 50; 14 CFR § 145.163. Indeed, the FAA Regulations that Plaintiff identified, and Sikorsky's training manual, speak only to the retention of *documents* or *records*—not the retention of fabricated metal test components. SF ¶50; 14 CFR § 145.163 ("training *records* must be retained for a minimum of 2 years.") (emphasis added); § 145.219.

Lastly, neither FAA Regulations nor Sikorsky's training manual prohibit the retention or use of parts in the manner that Plaintiff describes. SF ¶50-51; 14 CFR § 145.1 *et seq*. In fact, the Regulations contemplate the return to service of parts or "articles" if a person authorized under the repair station certificate approves the return to service. *See* 14 CFR §§ 145.157, 145.3.

Simply put, Plaintiff never identified any actual regulatory violation. The FAA Regulations that he vaguely invokes and Sikorsky's training manual do not prohibit the alleged conduct about which Plaintiff supposedly blew the whistle. At worst, Plaintiff did what Sikorsky hired him to do—identify hiring, training, and materials retention practices that could be improved consistent with the spirit of the FAA's and training manual's general requirements. His subjective belief that Sikorsky violated FAA violations, while it may have been in good faith, was misguided and based on his misinterpretation of general or imprecise regulations. *Anderson*, 574 F. App'x at 174 (violation of School Code not wrongdoing, noting Code was "too vague and subjective to serve as the basis for a valid whistleblower complaint."); *Kimes*, 126 F. Supp. 3d at 505 (fraudulent altering of police report not wrongdoing, noting "good faith" belief of legal violation insufficient); *Riggio v. Burns*, 711 A.2d 497, 501 (Pa. Super. 1998) (statute stating that licensed health care provider must be "responsible" was "too general and vague to permit the conclusion that a violation had occurred amounting to wrongdoing"). Accordingly, the Court should grant Defendants' motion because Plaintiff has not identified an instance of "wrongdoing" under the PWL.

C. Plaintiff Cannot Prove Causation Under The PWL

1. Plaintiff Cannot Make A *Prima Facie* Showing Of Causation

To make a *prima facie* showing of causation, "a plaintiff must show by concrete facts or surrounding circumstances that the report [of wrongdoing or waste] led to [the plaintiff's] dismissal." *Golaschevsky v. Dept. of Envtl. Prot.*, 720 A.2d 757, 759 (Pa. 1996) (quotations and citation omitted). The Pennsylvania Supreme Court has said that examples of such facts or circumstances include an instruction not to make a report of wrongdoing or a threat of adverse consequences for making a report. *Id*.

Here, the undisputed record does not reveal any facts or circumstances to support a reasonable conclusion that Plaintiff's alleged reports of what he thought were FAA regulatory violations played any role in the decision to terminate his employment. In fact, Plaintiff admits that his PWL claim is based on pure speculation. SF ¶82-83.*See Petro-Ryder v. Pittman*, 2015 U.S. Dist. LEXIS 166061, at *50 (E.D. Pa. Dec. 11, 2015) (plaintiff "cannot rely on and [a court] must not credit unsupported assertions, speculation, or conclusory allegations to avoid the entry of summary judgment.") (citations omitted). Plaintiff even admits that Tomko—the only person to whom Plaintiff speculatively imputes a retaliatory animus—never said or did anything to indicate that he was upset with Plaintiff for reporting perceived FAA regulatory violations. SF ¶41, 81, 84.*See Golaschevsky*, 720 A.2d at 759 (plaintiff did not show any threats or concrete facts to connect report to termination, instead relying "solely on vague and inconclusive circumstantial evidence."). Plaintiff simply concluded, after his termination, that Sikorsky must have wanted to fire him so that he would not shed light on the alleged wrongdoing that he discovered. SF ¶82-83. Nonetheless, Plaintiff's inability to fathom a reason for his termination other than his alleged protected activity is insufficient to create a *prima facie* showing of causation.

The timing of events also belies Plaintiff's claim. He testified to making his first alleged report of supposed wrongdoing in September 2015. SF ¶31. Sikorsky terminated Plaintiff's employment over seven months later, in May 2016. SF ¶77. Such timing does not suffice to show causation. *See Rink v. Ne Educ. Intermediate Unit 19*, 2017 U.S. App. LEXIS 25379, at *18-19, 30-31 (3rd Cir. Dec. 15, 2017) (noting need for "unusually suggestive temporal proximity" or "pattern of antagonism" to show a causal connection between protected activity and adverse employment action); *Urey v. Grove City College*, 94 F. App'x 79, 81 (3d Cir. 2004) (four months generally creates no inference of retaliation); *McAndrew v. Bucks County Bd. of Comm'rs*, 982 F. Supp. 2d 491, 505 (E.D. Pa. 2013) ("Six months is simply too long to infer, based on temporal proximity alone, that defendants terminated plaintiff for retaliatory reasons."). Given the undisputed record, Plaintiff simply cannot meet his *prima facie* burden on the issue of causation.

2. Plaintiff Cannot Establish Pretext

Even if Plaintiff could make a *prima facie* showing of causation, his claim still would fail. If a plaintiff makes a *prima facie* case under the PWL, "the burden shifts to the employer to establish that there was a legitimate reason for the adverse action." *Anderson*, 574 F. App'x at 173 n.4 (citing 43 P.S. § 1424(c)). "Once the employer offers such evidence, the burden shifts back to the employee to show that this reason was merely pretextual." *Id*. (citation omitted).

Sikorsky's legitimate, non-retaliatory reason for firing Plaintiff is clear and well-documented. SF ¶4-13, 53-77.Plaintiff violated Sikorsky's sexual harassment and IT policies.

SF ¶77.He exposed a female co-worker to inappropriate sexual conduct in the workplace, and he had pornography on a company-owned computer, including a video of himself masturbating. SF ¶57-60.Plaintiff admitted to Sikorsky's investigators that he made lewd comments about his penis, and that he used the company's computers to frequent his Facebook account knowing that it contained pornographic material. SF ¶63-68. Plaintiff's conduct not only violated company policies, but it was inherently wrong and could have exposed Sikorsky to liability for sexual harassment in the workplace.

Plaintiff cannot overcome Sikorsky's legitimate, non-retaliatory explanation with sufficient evidence of pretext. The undisputed record evidence establishes that on April 29, 2016, Thomas complained about Plaintiff sexually harassing her. SF ¶54. Sikorsky undertook an immediate investigation and terminated Plaintiff's employment one week later. SF ¶55-81. If anything can be inferred from the timing of events, it is that Sikorsky fired Plaintiff because of its conclusion that he violated company policies.

Individuals with no knowledge of Plaintiff's alleged reports of perceived FAA regulatory violations conducted the investigation. SF ¶72. As Plaintiff admitted, he never raised any FAA regulatory concerns during the investigation. SF ¶72. Instead, the investigators uncovered evidence substantiating Thomas's claims. SF ¶73. Plus, an independent forensic examination of Plaintiff's company-owned computer revealed pornography on it. SF ¶59-60. The investigators conveyed their findings to Newlin who, in turn, made the decision to terminate Plaintiff's employment. SF ¶73-74. Like the investigators, Newlin had no knowledge of Plaintiff's alleged whistleblower activity. SF ¶79-80. And she did not seek input from Tomko—the alleged bad actor (in Plaintiff's mind)—when making the termination decision. SF ¶78. Newlin first learned of Plaintiff's alleged belief that Sikorsky violated FAA Regulations after Plaintiff filed this lawsuit. SF ¶80. It goes without saying that a decision-maker cannot retaliate against an employee for engaging in protected activity about which the decision-maker has no knowledge. *See Moore v. City of Phila*., 461 F.3d 331, 351 (3rd Cir. 2006) (plaintiff must "show as well that the decision maker had knowledge of the protected activity"). Even if Newlin had been aware of Plaintiff's alleged protected activity, however, this undisputed record belies any notion of a retaliatory animus or a causal nexus between Plaintiff's alleged protected activity and his termination.

Faced with this record, Plaintiff has offered no evidence to cast doubt on Sikorsky's proffered reason for his well-deserved termination. For instance, Plaintiff has not identified any similarly situated employee who violated Sikorsky's sexual harassment and IT policies but who nevertheless escaped termination. That is because no such individual exists. SF ¶85-86.*See Bartos v. Commonwealth*, 2012 U.S. Dist. LEXIS 52209, at *9 (M.D. Pa. April 13, 2012) ("a plaintiff may support an argument that an illegitimate factor was a motivating or determinative cause of an adverse employment decision by showing that the employer had treated similarly situated persons not of his protected class more favorably."). On the other hand, despite having no burden of proof, Sikorsky has offered evidence that it has terminated employees who have violated the IT policy by havening inappropriate material on the company-owned electronic devices. SF ¶85-86. Unlike Plaintiff, though, these employees did not simultaneously harass coworkers. *Id*. In other words, Sikorsky has fired employees for transgressions that were less severe than Plaintiff's infractions. *See Andy v. UPS*, 2003 U.S. Dist. LEXIS 25193, at *28 (E.D. Pa. Oct. 24, 2003) (summary judgment to employer in discrimination case where plaintiff failed to show similarly situated employees treated more favorably and employer pointed to uncontested evidence that it treated similarly situated employees the same).

At bottom, the undisputed record evidence reveals the legitimacy of Plaintiff's termination. It is overwhelming and insurmountable. Accordingly, Plaintiff cannot prove causation and, therefore, Defendants are entitled to summary judgment, as a matter of law.

II. Lockheed Did Not Employ Plaintiff

Even if the Court allows Plaintiff's PWL claim to survive, it should dismiss Plaintiff's claim against defendant Lockheed. The PWL prohibits an "employer" from retaliating against and "employee." 43 P.S. § 1422. Plaintiff's claim against Lockheed is therefore premised on the existence of an employment relationship. No such relationship existed, however.

Plaintiff did not allege in his Complaint that Lockheed and Sikorsky are a single employer. He seems to assume that because the former is the parent company of the latter that both entities were his "employer" under an "integrated enterprise" theory. *See Plaso v. IJKG, LLC*, 553 F. App'x 199, 206 (3d Cir. 2014). He is wrong.

"It is a general principle of corporate law, deeply ingrained in our economic and legal systems that a parent corporation . . . is not liable for the acts of its subsidiaries." *Patrick v. Werner Enters.*, 2017 U.S. Dist. LEXIS 204144, at *19 (M.D. Pa. Dec. 11, 2017). "A court may not depart from this principle and pierce the corporate veil unless it finds that a subsidiary was a mere instrumentality of the parent corporation." *Marzano v. Computer Science Corp.*, 91 F.3d 497, 513 (3rd Cir. 1996) (quotations and citations omitted). "The requisite finding is that the parent so dominated the subsidiary that it had no separate existence but was merely a conduit for the parent. *Id.* (quotations and citation omitted). Courts "have found parent corporations to be employers only in extraordinary circumstances" where the two corporations were "so interrelated and integrated in their activities, labor relations, and management" that they should be treated as one employer. *Id.* The Third Circuit has said: "whether we should consider two entities as an integrated enterprise rests on the degree of operational entanglement—whether operations of the companies are so united that nominal employees of one company are treated interchangeably with those of another." *Plaso*, 553 F. App'x at 206. Adding clarity to the standard, the Third Circuit said that:

> [r]elevant operational factors include (1) the degree of unity between the entities with respect to ownership, management (both directors and officers), and business functions (*e.g.*, hiring and personnel matters), (2) whether they present themselves as a single company such that third parties dealt with them as one unit, (3) whether a parent company covers the salaries, expenses, or losses of its subsidiary, and (4) whether one entity does business exclusively with the other.

Nesbit v. Gears Unlimited, Inc., 347 F.3d 72, 87 (3d Cir. 2003) (citations omitted). There is a "strong presumption that a parent is not the employer of its subsidiary's employees." *Martin v. Safeguard Scientifics, Inc.*, 17 F. Supp. 2d 357, 363 (E.D. Pa. 1998). To prove an integrated enterprise, "it is never sufficient to establish only that a chain of command eventually ends at the parent's headquarters." *Id.* at 364. Under this exacting standard, Lockheed was not Plaintiff's employer.

It is beyond dispute that Plaintiff worked only at the Sikorsky facility in Coatesville during the short period between Lockheed's acquisition of Sikorsky and Plaintiff's termination. SF ¶3. During that period, Sikorsky and Lockheed were incorporated separately and observed corporate formalities. SF ¶95. Their activities, labor relations, and management were overwhelmingly distinct. SF ¶96. Sikorsky had its own headquarters and management. And Sikorsky hired and fired its own employees, including Plaintiff, without Lockheed's intervention. SF ¶96. Likewise, Sikorsky controlled its own day-to-day operations. SF ¶96. Sikorsky also provided products and services to the public that were distinct from Lockheed's other business segments. SF ¶96. The undisputed record does not reflect that Lockheed and Sikorsky were an integrated enterprise such that Lockheed could be deemed Plaintiff's employer. Other courts have held that Lockheed was not an employer under comparable circumstances. *See, e.g.*, *Sheard v. Lockheed Martin Energy Sys.*, 2005 U.S. Dist. LEXIS 35091, at *7-12 (E.D. Tenn. Sept. 28, 2005); *Kolczynski v. United Space Alliance, LLC*, 2005 U.S. Dist. LEXIS 20508, at *9-13 (M.D. Fla. Sept. 20, 2015). The Court should therefore grant summary judgment to Lockheed.

III. Plaintiff Cannot Recover Punitive Damages Under The PWL

In his request for relief, Plaintiff requests and award of punitive damages. *See* Compl. p. 6. The PWL, however, states clearly the remedies that it provides:

> A court, in rendering a judgment in an action brought under this act, shall order, as the court considers appropriate, reinstatement of the employee, the payment of back wages, full reinstatement of fringe benefits and seniority rights, actual damages or any combination of these remedies. A court may also award the complainant all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, if the complainant prevails in the civil action.

43 P.S. § 1425. It also allows for the imposition of a civil fine. *Id*. § 1426. The PWL, on its face, does not allow for an award of punitive damages. *See id*. Nothing in the PWL's remedial provisions suggest that punitive damages are recoverable to a prevailing plaintiff, because the General Assembly knowingly chose not to provide such damages. *See id*. Accordingly, courts have dismissed punitive damages claims when plaintiffs seek such damages under the PWL. *See Drumm v. Triangle Tech.*, 2016 U.S. Dist. LEXIS 46997, at *30 (M.D. Pa. April 7, 2016) (dismissing punitive damages claim, holding punitive damages are not available under PWL); *Romano v. Bucks County Water & Sewer Auth.*, 2004 U.S. Dist. LEXIS 4919, at *4 (E.D. Pa. March 25, 2004) (same); *O'Rourke v. Dep't of Corr.*,778 A.2d 1194, 1202-03 (Pa. 2000) ("recovery under the [PWL] is proportionate to the harm suffered, as punitive damages are not available."). This Court should do the same, even if it allows the PWL claim to survive.

IV. Plaintiff Has No Right To A Jury Trial Under The PWL

Finally, Plaintiff demands a jury trial, but he has no such right under the PWL. *See* Compl. p. 1. The PWL remedial provision quoted above, 43 P.S. § 1425, specifically identifies the court, but it "never refers to the jury." *Bensinger v. Univ. of Pitt. Med. Ctr.*, 98 A.3d 672, 677 (Pa. Super. 2013). "Thus, the plain language of the statute makes clear that [plaintiffs do] not possess a statutory right to a jury trial under the [PWL]." *Id.*; *see also Zenak v. Police Ath. League of Phila.*, 132 A.3d 541, 556 (Pa. Commw. 2014) ("the trial court's decision to submit the [PWL] claim to the jury was prejudicial and, therefore, constitutes error."). Thus, even if Plaintiff's PWL claim survives this motion, the Court should dismiss or strike Plaintiff's jury demand, consistent with well-reasoned authority.

Conclusion

For all of the above reasons, Defendants request an order granting their motion for summary judgment and dismissing Plaintiff's Complaint, entirely and with prejudice.

DATED: May 30, 2018

Respectfully submitted, DEFENDANTS,
By Their Attorneys,

/s/ Anthony S. Califano

Anthony S. Califano (*pro hac vice*)
Seyfarth Shaw LLP
Two Seaport Lane, Suite 300
Boston, MA 02210
acalifano@seyfarth.com

James L. Curtis (*pro hac vice*)
Seyfarth Shaw LLP
233 S. Wacker Dr., Suite 8000
Chicago, IL 60606
jcurtis@seyfarth.com

Jacob Oslick (Pa. Bar No. 311028)
Seyfarth Shaw LLP
620 Eighth Avenue Street
New York, NY 10018-1405
(212) 218-6480
joslick@seyfarth.com

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2018, I caused the foregoing document to be filed electronically with the Clerk of the Court, via the Court's CM/ECF system, which sent notification of such filing to the following counsel of record:

Matthew B. Weisberg
L. Anthony DiJiacomo, III
Weisberg Law
7 South Morton Ave.
Morton, PA 19070
mweisberg@weisberglawoffices.com
adijiacomo@weisberglawoffices.com

Gary Schafkopf
Hopkins & Schafkopf, LLC
11 Bala Ave.
Bala Cynwyd, PA 19004
gschafkopf@gmail.com

/s/ Anthony S. Califano
Anthony S. Califano